



CITY OF SANTA BARBARA

COUNCIL AGENDA REPORT

AGENDA DATE: October 18, 2011

TO: Mayor and Councilmembers

FROM: Planning Division, Community Development Department

SUBJECT: Appeal Of Single Family Design Board Approval For 1359 And
1383 Santa Teresita Drive Erosion Repair

RECOMMENDATION:

That Council deny the appeal of Debbie Foley and uphold the decision of the Single Family Design Board to grant Project Design Approval with findings and conditions for a proposed erosion repair grading and drainage plan along a private driveway/road in the Hillside Design District.

DISCUSSION:

The project includes a grading and drainage plan for improvements along a secondary access road serving the property at 1575 N. Ontare Road (also known as Rancho San Roque). The private road is located on a private easement held of the owners of Rancho San Roque over the two properties located at 1359 and 1383 Santa Teresita Drive. The Single Family Design Board (SFDB) reviewed the proposed plan on August 1, 2011 and voted 4/0/1 to grant Project Design Approval making the required findings consistent with Santa Barbara Municipal Code Section 22.69.050. The approval is subject to conditions that the applicant returns to the Consent Calendar with details regarding the proposed paving and hydro-seed mix.

The hillside road under review is an area that has experienced significant erosion due to uncontrolled storm water flows and unfavorable soil conditions (see photos in Attachment 1). Prior attempts have been made to restore the slope, but more work is needed to better maintain the road and subsurface utilities. The proposed plan includes grading and drainage improvements within the easement area which is located, in part, on the appellant's property. The private road is within both the City and the County jurisdictions; of course, only those portions in the City are subject to City review. The SFDB focused their review on the visual effects of the grading plan and associated landscaping.

At the SFDB meeting, the applicant provided a thorough description of the project and answered the Board's questions (please see SFDB Minutes, Attachment 2). Both property owners on which the easement is located addressed the Board. Mr. Tim Foley who is the owner of the down slope land expressed concern that the proposed compaction was not sufficient and that proper compaction of the soil would require compaction to occur outside the easement. Another concern Mr. Foley raised was about the extent of the water flows and erosion. Moreover, Mr. Ken Aiello, the owner of the up slope land, solicited support for the improvements insofar that they are adequate. Mr. Aiello also requested that everything necessary should be done in the engineering and construction of the slope repairs.

On August 11, 2011, Debbie Foley submitted an appeal letter to the City Clerk's Office (Attachment 3). The letter explicates her reservations with the current proposal as well as providing information about prior grading activity on this site dating back to 2001. It is Staff's position that the discrepancies between the Foleys and the applicants concern issues unrelated to the scope of the City's design review process. Further, this appeal should not focus on the appellants' claims about prior grading activities of many years ago, but rather on the design and appearance of the proposed private road.

According the Building Official, a permit was not required for prior grading activity on the site as confirmed by an engineer. The dispute between the applicant and the appellants over the extent to which the applicant may make improvements within the easement concerns the real property rights of the applicant and the appellant. The City design review process is not the proper forum to determine the real property rights of the applicant and the appellant. The physical improvements to the site are subject to review by the City as required by the Municipal Code (Attachment 4). The proposed grading plan requires review and approval from the SFDB and a building permit.

The appellant states that she acknowledges that there is a need to repair the slope. However, she requests that more environmental review and engineering be required to explore other options such as bringing the drainage out to Santa Teresita Drive, retaining the drainage on the applicants' property, or addressed in some other manner.

The SFDB asked a number of questions as part of its review to understand the need for improvements and the proposed design. The Board was satisfied with the plan because this is where the water has historically passed, the road clearly needs repair, and the design does not represent a major visual change to the site. The applicant team includes a civil engineer and the plans are based on the recommendations of a licensed geotechnical engineer. Additional geotechnical engineering and soils reports will also be submitted for review by the Building and Safety staff prior to issuance of the Building Permit. Staff recommends that the Council deny the appeal and uphold the decision of the SFDB.

- ATTACHMENT(S):**
1. Photos Submitted by Applicant
 2. SFDB Minutes Excerpt, August 1, 2011
 3. Debbie Foley Appellant Letter, received August 11, 2011
 4. SBMC Section 22.69.050 Findings

Note: A copy of the Slope Erosion Repair Plan is available for review at the Mayor and Council Office.

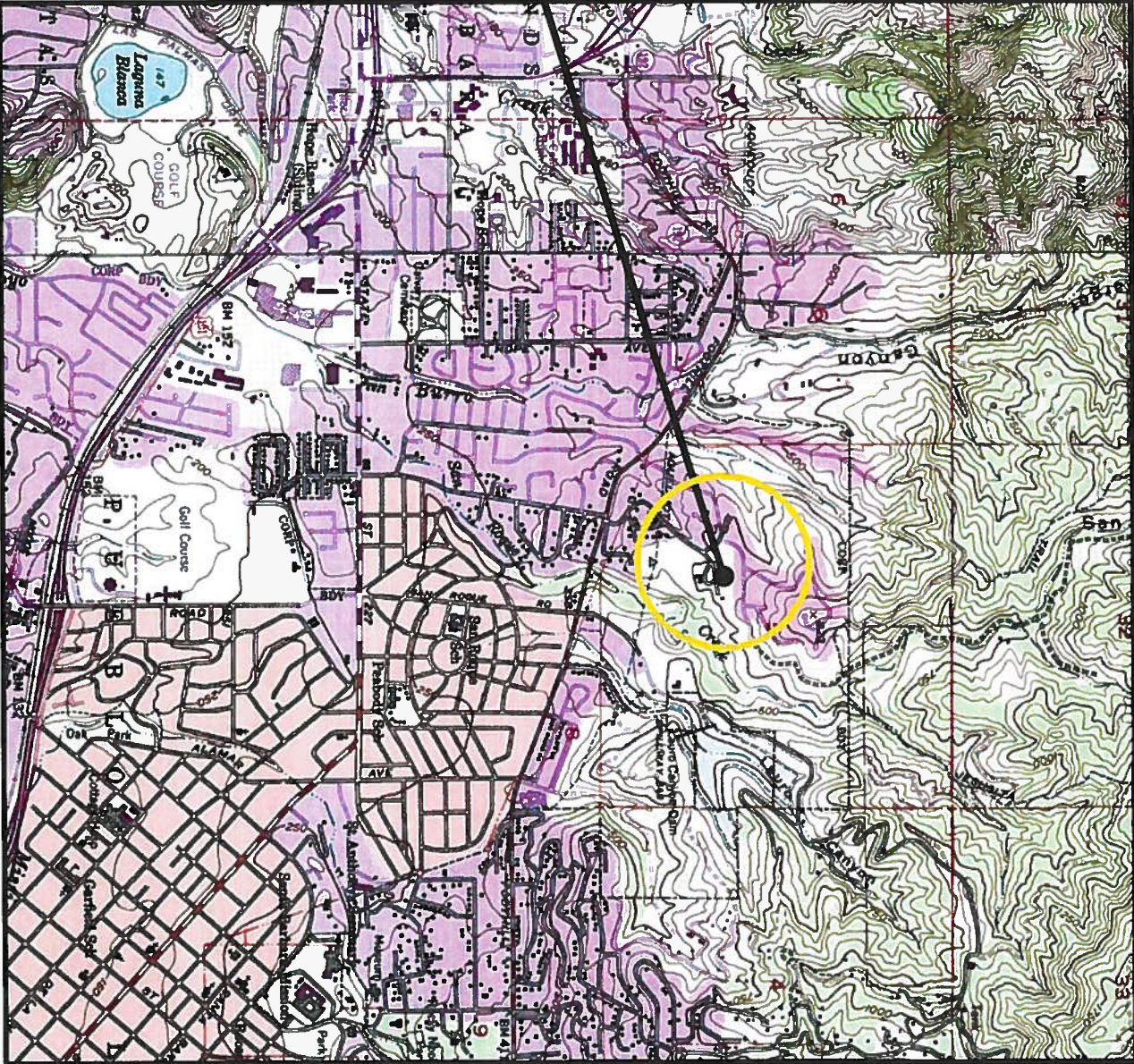
PREPARED BY: Bettie Weiss, City Planner

SUBMITTED BY: Paul Casey, Assistant City Administrator

APPROVED BY: City Administrator's Office

Vicinity Map

Rancho San Rogue Access Easement



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CITY OF SANTA BARBARA
PLANNING DIVISION

Santa Teresita Easement Storm Erosion Spring 2011



**Looking North at Uphill Neighbor
And Entry of Easement Road**

**Looking South at Downhill Neighbor
And North End of Easement Road**



Santa Teresita Easement Storm Erosion Spring 2011



**Looking North at Largest of Three
Slope Failure Points**



**Looking North at Eroded Slope
and Fractured Roadway**

SINGLE FAMILY DESIGN BOARD
MINUTES

Monday, August 1, 2011

David Gebhard Public Meeting Room: 630 Garden Street

3:00 P.M.

BOARD MEMBERS:

GLEN DEISLER, CHAIR - PRESENT
DENISE WOOLERY, VICE- CHAIR - PRESENT
BERNI BERNSTEIN - PRESENT
BRIAN MILLER - PRESENT
JIM ZIMMERMAN - ABSENT
FRED SWEENEY - PRESENT

CITY COUNCIL LIAISON: DALE FRANCISCO - ABSENT

PLANNING COMMISSION LIAISON: MICHAEL JORDAN - ABSENT

STAFF:

JAIME LIMÓN, Design Review Supervisor - ABSENT
MICHELLE BEDARD, Planning Technician - PRESENT
KATHLEEN GOO, Commission Secretary - PRESENT

Website: www.SantaBarbaraCa.gov

CONCEPT REVIEW - NEW ITEM: PUBLIC HEARING

3. 1359 and 1383 SANTA TERESITA DR

Assessor's Parcel Numbers: 055-141-053 and 055-141-045

Application Number: MST2011-00283

Applicant: Mark Lloyd

Agent: Greg Martin

Owner: Kenneth and Catherine Aiello Living Trust

Owner: Timothy and Debra Foley Family Trust

Easement Owner: Pacifcor, Inc.

(Proposal for slope erosion repair due to slope failure after a recent storm event. The proposal involves site work, including 2,500 cubic yards of grading (imported fill), to be located between two residential lots on Santa Teresita Drive (1359 & 1383), and within road and utility easements to access and serve the parcel at 1575 N. Ontare Dr.)

(Comments only; project requires Environmental Assessment.)

(4:46)

Present: Mark Lloyd, Applicant.

Staff announced that the Environmental Assessment has been completed and that action may be taken.

Public comment opened at 4:52 p.m.

The following public comment spoke either in support or in opposition of the proposed project:

- 1) Tim Foley, (adjacent property owner/provided photos) in opposition; expressed concerns regarding erosion of unstable soil, and displacement of water run-off/debris, and drainage off the slope at the bottom of the slope onto his property.
- 2) Ken Aiello, (adjacent westerly property owner) in opposition; expressed concerns regarding grading plans and unstable soil, environmental and traffic impacts, stability of the slope, and displacement of water run-off and drainage off the slope on the site onto his property.

Public comment closed at 4:58 p.m.

Motion: Project Design Approval with the finding that the Neighborhood Preservation Ordinance and Grading findings have been met as stated in Subsection 22.69.050 of the City of Santa Barbara Municipal Code and continued indefinitely to Consent with conditions:

- 1) The Board had positive comments and made findings for consistency in appearance, appropriate requirements for special design district grading natural to the topography, protection of the public health, safety, and welfare, and vegetation removal.
- 2) The Board deemed the project will have no adverse impact to the existing oak trees on the project site.
- 3) Indicate areas of existing road to remain, areas of road to be resurfaced, and existing and proposed surface materials.
- 4) Provide information to clarify species in of the proposed hydro seed-mix; verify compliance of seed mix with the Fire Department to confirm compliance with High Fire Landscaping requirements.

Action: Woolery/Miller, 4/0/1. Motion carried. (Bernstein abstained, Zimmerman absent).

The ten-day appeal period was announced.

The Applicant stated that he would make every effort to coordinate with neighborhood concerns.

August 10, 2011

City of Santa Barbara Planning Division, Single Family Design Board
City Council Liaison: Dale Francisco
Planning Commission Liaison: Michael Jordan

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AUG 11 2011

CITY CLERK'S OFFICE
SANTA BARBARA, CA

Board Members:

Glen Deisler, Chair
Denise Woolery, Vice-Chair
Berni Berenstein
Brian Miller
Jim Zimmerman
Fred Sweeney

Regarding: Review and Approval for 1359 Santa Teresita and 1383 Santa Teresita Drive
Application Number: MST2011-00283 Assessor's Parcel Numbers: 055-141-053 & 055-141-045
August 1, 2011

On August 1st you heard a proposal by the applicant Mark Lloyd to do grading, drainage, and paving work on this easement that is located between two residential lots on Santa Teresita Drive. You approved the work, based on the information provided to you by Mr. Lloyd. Mr. Tim Foley and Mr. Ken Aiello the owners of the two residential lots both spoke in opposition of the project, yet the board voted to approve.

We felt it was important that you recognize the damaged already caused by the work that has occurred on this easement over the past 6 years, and that will continue to occur if this plan is allowed to proceed. We hold the board and the owners of the property, as well as the designers and contractors responsible for conducting work on our property without our approval that will cause us damage and distress to the value of our land and homes and more importantly may cause severe injury.

This is not the first time we have been at this crossroad on this project. In June of 2006 we appeared at another City Planning Meeting, and presented the following data and asked the members at that time to please look into the permit and file history of this project. They did, and the project was denied. Unfortunately, the owner continued to do work without permits and the City continued to look the other way. In the mean time, our property suffers tremendous erosion every time it rains. (Below is the letter presented in 2006 along with images of the work as it has progressed-**please note most of this work was done without permits, and this easement has never been paved!**)

June 15, 2006

We would like to thank you for the opportunity to speak today.

I am Debbie Foley, this is my husband Tim we live at 1383 Santa Teresita, our neighbors Ken and Catherine Aiello, at 1359 Santa Teresita could not be here today because of a high school graduation but have assisted in the drafting of this statement. Our homes are in an area of adobe clay type soil in the SB foothills known to be prone to slide and soil movement.

My husband and I are here to bring to the attention of this board a situation that has been on going on our properties for a number of years which resulted in a series of events that took place last Thursday, June 8th. Our properties which lie side by side on Santa Teresita Drive

are within City boundaries. Behind us is a large agricultural ranch, over several hundred acres owned by Mr. and Mrs. Michael Klein, which is primarily in the County, with an address of 1575 N. Ontare.

In recent years, the Klein's submitted and was granted approval by the City Building and Permit Department to do grading work over a portion of our properties to which they have an easement for road and utilities, but not for drainage. The submissions of Mr. Klein's applications have always listed his own property address of 1575 N. Ontare Road as the project work site, instead of our properties address. It is also important to consider that there has never been a legal City driveway or improved road across our properties with access onto Santa Teresita Drive, there is no curb cut.

The first of such work, took place in 2001 when the City issued a permit to the Klein's to install a trench and hookup for utilities, which included gas, water and sewer. Upon arriving home and seeing bulldozers on our properties without notification, both the Aiello's and we went down to the Building Department to see if this was standard procedure. Mr. Aiello informed the City that the trench and pipes were routing to building sites in the County and not the City and questioned the City's normal policy not to allow a hook up to City utilities without annexation. Indeed this was true. And so, with this new insight to their mistake the Building Department issued the Klein's a letter stating they could not hook up to City utilities without annexations. Ultimately, the pipes were not connected into Santa Teresita and the trench was buried without proper compaction, leaving the dirt path of a bulldozers' blade across the hillside. Our properties were forever changed.

The Building Department responded to us that the issuance of a permit was an oversight. We were informed by City officials that our names would be entered in the data base and noted in the files and that no additional permits would be issued without full notification to us, the true property owners whenever a Master Application for a permit was initiated and applied for.

Relying on the integrity of the Building Department, we went on our way. Unhappy about now having a graded 6ft dirt road, where there once was a nice terraced hillside, but fully aware that the Klein's had a right for ingress and egress and relied on the Building Department to ensure that correct measure where taken when issuing the grading permit that it would be done to plans, codes and structural correctness, including a proper drainage system.

The newly created dirt road was used by the Klein's employees' trucks and 4-wheel drive vehicles, which traversed the City easement and subsequently jumped the curb onto Santa Teresita. Over time we noticed that the terrain around, above and below the terraces was changing and this concerned us. So on more than one occasion calls were made to the Klein's manager that water was beginning to damage the area that they had graded and that excessive amounts of runoff were coming on to our property outside of the easement.

In January of 2005 the path, gave way, and the hillside had some terrible slides, I have photos with me. I wrote letters to the City as well as the Klein's but received very little if any response. At this same time, we learned that the City Building Department had issued another permit to do a curb cut to allow for a driveway across our properties. Again this permit was issued without any notification to us the property owners. We questioned the validity of a curb cut when there was no associated driveway or road permit. Didn't the installation of a 100-

yard driveway on the side of a hillside require some kind of review? How could a permit be issued again without our knowledge?

We made calls, and had meetings. We were assured that this would not happen again. We believe in the City's integrity and that one of its primary responsibilities is to ensure that safety and standards are adhered to when reviewing all plans. We believed that there was a review process. That someone would look in the computer system and in the property files and do a review before issuance of a permit.

And so for the 2nd time the Building Department after realizing their mistake revoked the permit, since no plans had ever been submitted for the installation of a driveway, and work was stopped.

*In June of 2005 the Klein's again went in for a permit to do re-paving and re-grading of an existing road/driveway. **Thereafter, on June 21st Chris Hansen of the Building Department denied this requests, stating that the City does not recognize the dirt road as a legal driveway. Any work would require soil, engineering, erosion control, drainage and foundation wall plans to be submitted and as of that date none had been submitted. The only work that could be done was weed abatement.***

Our faith is restored. But it is short lived, for just 2 months later the Klein's applied for and received a permit for repaving and re-grading an existing driveway. Documenting only their address, property parcel number and their ranch A1 zoning. There was no mention of our property parcel numbers. The Klein's received a permit again with no plans attached

***Please note the language; re-paving, re-grading, and existing driveway. There is no record at the Building Department of approved plans for the development of a driveway or road. This was simply a dirt terrace that the Klein's have an easement across to install a road and have gradually enlarged under fraudulent representation.** The City Building Department by aiding in this process, gives the public the impression that one does not need to adhere to the Building Department recommendations.*

Well, needless to say, once it came to our attention we headed back to the Building Department, lucky for us the permit had expired. Again we were assured it would not be renewed without proper review and proper notification to us, the property owners.

Last Thursday morning, on June 8th we heard the rumble of bulldozers moving across our properties. We immediately made calls to the City pleading for someone to come and put a stop to this before the entire hillside is changed yet again. We are told to call the police. Believing that there is no way they could have a permit to do any work on our properties, we do so.

The police came; the Bulldozer driver shows the officer what appears to be a permit with attached plans. We couldn't believe this. We made more calls, only to get answering machines. For several hours we wait for someone from the City to appear, while the bulldozers continue to operate. Finally, at approximately 10:00am a City official Planner appears, clearly unaware of the magnitude of the scope of work taking place. He informs us that there is a permit, but he will stop the work until he can look into the matter and find out why this scope of work was allowed to happen without 1) the notification to the property owners and 2)

without review. By this point our properties are severely damaged. The grading cut up to the curb on Santa Teresita. See the photos.

The next day Tim and I go to the City Building Department to get a copy of the permit. Only to learn that this was not a new permit, but a granting of an extension of an expired permit, one we were told would not be renewed.

Today we have been informed that that permit has been suspended and the project has been sent to ABR. We are somewhat grateful and hopeful that maybe in ABR someone will actually listen to us. But in truth, we are not relying on it. We have lost faith in the City Building Department. We have little expectation that our concerns will be addressed.....

This process of doing work bit by bit in order to avoid proper design and review of this "driveway" continued through 2008. Sadly, the owner of the easement passed away at the end of 2008. His father took over managing the property. We came to an understanding and for the past several years very little work has been done. The road has continued to degenerate making it difficult and dangerous to pass. We understand his need to repair the easement at this point, however, you cannot accept this new proposal of simply catching his water run-off and focusing it on one point on our hillside to disseminate as a good, viable drainage plan that will stop the erosion and create a safe condition on our property. We strongly insist that this project must go through all review and planning stages especially Environmental Review, Hillside, and ABR as has been recommended by personal from your own departments for years running, and that the slope and drainage issue be engineered so that the water is either taken all the way out to Santa Teresita Drive or kept on 1590 San Roque's properties and carried away in some other manner. It cannot be allowed to continue to be dumped onto our property simply because it is the easiest and most feasible for the easement holder.

There have been several plans developed over the years by past owners to develop this into a paved road, structurally sound driveway; all have been scratched because of the expense of putting in a proper drain system and erosion control in this very volatile expansive soil. Most homes, including ours have caissons. This is not a simple driveway project and this proposal is a band aid fix that may cause more instability and damage.

This board has an obligation to research all aspects of these projects and its implications prior to approval. I do not believe that you have done this. I am happy to send you copies of the City and County files regarding the history of pulled and cancelled permits and the remarks of City employees regarding the need for strict guidelines on this easement. I have attached documents and photos for your review.

Again, I thank you for your time and truly hope that you will give it your time and consideration.

Sincerely,


Debbie Foley

1383 Santa Teresita Drive
Santa Barbara, CA 93105
805-705-1752
Debbie@debbiefoley.com



first sign of work pre-2005 1



after trenching for util trucks use rd 1



city is called damages begin 2005 1



more damages 2005-2006 1



2006 larry cassidy stops work 1



2006 work cont without permit 1



2006 work by hand to avoid permit 1



2011 damages continue 1

22.69.050 Neighborhood Preservation, Grading and Vegetation Removal Ordinance Findings.

If a project is referred to the Single Family Design Board for review pursuant to Section 22.69.020 and the Single Family Design Board Guidelines, the Single Family Design Board shall make the findings specified below prior to approving the project.

A. **NEIGHBORHOOD PRESERVATION FINDINGS.** Prior to approval of any project, the Single Family Design Board shall make each of the following findings:

1. **Consistency and Appearance.** The proposed development is consistent with the scenic character of the City and will enhance the appearance of the neighborhood.

2. **Compatibility.** The proposed development is compatible with the neighborhood, and its size, bulk, and scale are appropriate to the site and neighborhood.

3. **Quality Architecture and Materials.** The proposed buildings and structures are designed with quality architectural details. The proposed materials and colors maintain the natural appearance of the ridgeline or hillside.

4. **Trees.** The proposed project does not include the removal of or significantly impact any designated Specimen Tree, Historic Tree or Landmark Tree. The proposed project, to the maximum extent feasible, preserves and protects healthy, non-invasive trees with a trunk diameter of four inches (4") or more measured four feet (4') above natural grade. If the project includes the removal of any healthy, non-invasive tree with a diameter of four inches (4") or more measured four feet (4') above natural grade, the project includes a plan to mitigate the impact of such removal by planting replacement trees in accordance with applicable tree replacement ratios.

5. **Health, Safety, and Welfare.** The public health, safety, and welfare are appropriately protected and preserved.

6. **Good Neighbor Guidelines.** The project generally complies with the Good Neighbor Guidelines regarding privacy, landscaping, noise and lighting.

7. **Public Views.** The development, including proposed structures and grading, preserves significant public scenic views of and from the hillside.

B. **HILLSIDE DESIGN DISTRICT AND SLOPED LOT FINDINGS.** In addition to the findings specified in Subsection A above, prior to approval of any project on a lot within the Hillside Design District described in Section 22.68.060 or on a lot or a building site that has an average slope of 15% or more (as calculated pursuant to Section 28.15.080 of this Code), the Single Family Design Board shall make each of the following findings:

1. **Natural Topography Protection.** The development, including the proposed structures and grading, is appropriate to the site, is designed to avoid visible scarring, and does not significantly modify the natural topography of the site or the natural appearance of any ridgeline or hillside.

2. **Building Scale.** The development maintains a scale and form that blends with the hillside by minimizing the visual appearance of structures and the overall height of structures.

C. **GRADING FINDINGS.** In addition to any other applicable findings specified in this Section 22.69.050, prior to approval of any project that requires design review under either Paragraph 22.69.030.C.11 or Subsection 22.69.030.E of this Chapter, the Single Family Design Board shall make each of the following findings:

1. The proposed grading will not significantly increase siltation in or decrease the water quality of streams, drainages or water storage facilities to which the property drains; and

2. The proposed grading will not cause a substantial loss of southern oak woodland habitat.